held that examination may be compelled, it rests in the discretion of the trial court and will not be reviewed unless grossly erroneous.

EVIDENCE—PRIVILEGED COMMUNICATION—COUNTY ATTORNEY.—In an action for malicious prosecution, the testimony of the county attorney, as to the statements which caused the indictment of plaintiff, made to him by defendant, was *held* inadmissible, because a privileged communication. *Gabriel* v. *McMullin* (1905), — Ia. —, 103 N. W. Rep. 355.

Whether in such a case the relation of attorney and client exists, the cases are in conflict. The Code of Iowa (§ 3643) provides that "no practicing attorney * * * shall be allowed in giving testimony to disclose any confidential communication properly entrusted to him in his professional capacity." It will be seen that the above decision was justified under the statute, even though the relation of attorney and client did not exist. This veiw was taken by the same court in *State* v. *Houseworth,* 91 Iowa 740, where the statute was held broad enough to cover such a case. Upon practically the same state of facts, it was held that the relation of attorney and client did exist, that the prosecuting attorney was defendant's attorney for the time being, and that the communication was privileged. *Oliver* v. *Pate,* 43 Ind. 132. In *Vogel* v. *Gruaz,* 110 U. S. 311, the same view was taken, the court saying that the person consulted the prosecuting attorney, just as he would consult any other attorney, to ascertain if the facts stated were sufficient to justify prosecution. The fact that nothing was paid for the advice made no difference. This decision was also placed on the ground of an informer's privilege. On the other hand, *Cole* v. *Andrews,* 74 Minn. 93 held that in such a case the relation of attorney and client did not exist, that the communication was not privileged, and that the statute providing that "a public officer cannot be examined as to communications," etc., did not apply. In *Granger* v. *Warrington,* 8 Ill. 299, such a communication was declared not privileged, as the relation of attorney and client did not exist, and that no considerations of public policy so required. In some cases such communications are held privileged on the principle of informers and government officers. This reasoning is indicated and partially relied on in *Oliver* v. *Pate, Vogel* v. *Gruaz,* supra. The distinction should be noted that in such a case the privilege is that of the government, not of the person making the statement.

EXECUTION—PREMATURE—COLLATERAL ATTACK.—Execution was issued by consent of defendant within twenty-four hours after entry of judgment, on it defendant was arrested and imprisoned, and in an action by the creditor against the surety on the recognizance of the defendant as a poor debtor, *Held,* that the surety might defend the action by showing that the execution was prematurely issued, and in contravention of the statute forbidding execution to issue within twenty-four hours after entry of judgment; and that while the court might, the clerk could not, issue such execution on consent of defendant. *Washington National Bank* v. *Williams* (1905), 188 Mass. 103, 74 N. E. 470.

This decision follows *Penniman* v. *Cole* (1844), 8 Metc. (49 Mass.) 496, in holding that premature issuance of execution may be taken advantage of in a collateral proceeding. It is held in most, if not in all, of the other states in which the question has been raised, that premature issuance of execution can be taken advantage of only by the defendant in the judgment, and by him only in a direct proceeding to have the execution quashed, for that reason. See *Bacon* v. *Cropsey* (1852), 7 N. Y. 195; *Wilkinson's Appeal* (1870), 65 Pa. St. 189; *Abercrombie* v. *Chandler* (1846), 9 Ala. 625.

FOREIGN CORPORATIONS—SERVICE OF PROCESS ON OFFICER.—Defendant, an Illinois corporation, sold to plaintiff, a Missouri company, certain machinery. A dispute having arisen between the parties as to its disposal, after the sale had been rescinded under the terms of the contract, defendant's general manager came to Missouri to adjust the differences, and while there was served with the summons in this action. Defendant had no office or agency in Missouri and the only business it had ever transacted there was that with plaintiff and two similar transactions. On a plea to the jurisdiction *Held,* that the service was sufficient. *Brush Creek Coal & Mining Co.* v. *Morgan-Gardner Electric Co.* (1905), (C. C. W. D. Mo.) 136 Fed. Rep. 505.

The decision of the court is based on the holding in *St. Clair* v. *Cox,* 106 U. S. 350, 1 Sup. Ct. 354, 27 L. Ed. 222, where it was held that the service is sufficient if made on such an agent as "may be properly deemed representative of the foreign corporation." *Lafayette Ins. Co.* v. *French,* 18 How. 404, 15 L. Ed. 451. And where the agent served is a general manager of the company, present in the state on its business, the service as made on him, if in a suit relating to that business, is sufficient, although the corporation does not transact business in the state so as to make it an inhabitant thereof. *Houston et al.* v. *Filer & Stowell Co.*, 85 Fed. Rep. 757. In the more recent case of *Board of Trade* v. *Hammond Elevator Co. et al.* (1905), 198 U. S. 424, 25 Sup. Ct. 740, the court discussed the validity of a service made under the terms of a statute providing that foreign corporations doing business in the state may be served with process by leaving a copy with any of its agents found in the county. It was held that service on the local "correspondents" of a foreign corporation which furnishes them with market quotations to enable them to take orders from their customers for shares of stocks, was a sufficient service on the foreign corporation although the relationship of agency between the parties was expressly disclaimed in their contract. Cf. *Gottschalk Co.* v. *Distilling & Cattle Feeding Co.*, 50 Fed. Rep. 681.

HOMESTEAD—ORAL CONTRACT FOR CONVEYANCE—SPECIFIC PERFORMANCE.—Defendant W, whose wife had filed a declaration of homestead in accordance with the statute upon certain real property, listed the property for sale with real estate agents who made an oral contract for its conveyance with the plaintiff who went into possession, paid part of the purchase price, and made improvements with the knowledge of W's wife and without objection by her. In an action against W and his wife for specific performance of the oral contract to convey, *Held,* that plaintiff is entitled to